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Committee on Relations with the Host Country

Letter dated 24 April 2002 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the Chairman of the Committee on Relations with the Host Country

Further to our letters dated 21 and 25 March 2002 addressed to you, I have the honour to inform you that on 10 April 2002 we received from the Permanent Mission of the United States of America to the United Nations a positive reply (see annex) to our note verbale of 22 March 2002 stating that the City of New York had been requested to terminate the action to which this Mission had objected on the grounds that it is contrary to law, as explained in our note.

We welcome the reply received from the Permanent Mission of the United States of America, which supports the stance taken on this issue by the Libyan Arab Jamahiriya. We transmit to you herewith a copy of the note and its attachment, and we request you to have the present letter and its annex circulated as a document of the Committee on Relations with the Host Country.

(*Signed*) Abuzed Omar **Dorda**
Permanent Representative

02-35608 (E) 290402 290402

Annex to the letter dated 24 April 2002 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the Chairman of the Committee

[Original: English]

Note verbale dated 10 April 2002 from the United States Mission to the United Nations addressed to the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations

The United States Mission to the United Nations presents its compliments to the Permanent Mission of the Socialist People's Libyan Arab Jamahiriya to the United Nations and, with reference to the latter's note No. 549 of 22 March 2002 regarding the notice of intention to sell tax liens, wishes to inform the following:

The Department of State sent a letter to the New York City Department of Finance requesting that the City of New York take action to terminate the tax lien sale and to withdraw the tax notice on the Permanent Mission's property.

The text of the letter sent to the New York City Department of Finance is attached (see appendix).

The United States Mission to the United Nations avails itself of this opportunity to renew to the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations the assurances of its highest consideration.

Appendix

Text of the letter sent to the New York City Department of Finance

By diplomatic note dated March 22, 2002, the Permanent Mission of the Socialist People's Libyan Arab Jamahiriya to the United Nations ("Libyan Mission") informed the United States Mission to the United Nations that it had received from the City of New York, Department of Finance, a "Notice of Intention to Sell Tax Liens." The tax notice concerns the property at 309 East 48th Street, which is used to house the Libyan Mission to the United Nations. On December 5, 2001, the State Department approved the Libyan Mission's request to use all floors of the property for Mission purposes, including seven floors previously withheld for potential lease to commercial tenants. A copy of the tax notice sent to the Libyan Mission is enclosed for your reference.

For the reasons stated more fully below, under the international legal obligations of the United States, and under the Libya sanctions regulations, 31 C.F.R. Part 550, issued by the United States Department of the Treasury pursuant to Presidential Executive Order Nos. 12543 and 12544, the tax lien sale may not proceed against the Libyan Mission's property. Accordingly, we request that the City of New York take immediate action to terminate the tax lien sale and to withdraw the tax notice on the Libyan Mission's property.

As the City of New York is aware, under Article 22(3) of the Vienna Convention on Diplomatic Relations ("VCDR"), applicable to missions to the United Nations under Article 105, para. 2, of the United Nations Charter, and Article V, Section 15, of the United Nations Headquarters Agreement, the "premises of the mission...shall be immune...from attachment or execution." The prohibition against attachment precludes a tax lien against the Libyan Mission's property, and necessarily also the sale of such a lien. This treaty obligation of the United States, of course, extends to state and local governments.

In addition, as a result of economic sanctions imposed by the United States on Libya, the tax lien sale contemplated in the tax notice is prohibited unless it is authorized by the U.S. Department of the Treasury. Pursuant to the authority of the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. ' ' 1701-06, the president has broad powers to "block" the assets of foreign governments and to prohibit economic transactions of any kind concerning such assets. Acting under IEEPA and other authorities, on January 8, 1986, President Reagan ordered "blocked all property and interests in property of the Government of Libya...in the United States" and authorized the Secretary of the Treasury to carry out the order pursuant to IEEPA. Exec. Order No. 12544 (Jan. 8, 1986), 51 Fed. Reg. 1235. Pursuant to this order, the Treasury Department, Office of Foreign Assets Control, issued the Libyan Sanctions Regulations, 31 C.F.R. Part 550 (the "Sanctions Regulations").

The Sanctions Regulations define "blocked property" as "any property in which the Government of Libya has an interest, with respect to which...transfers or ...other dealings may not be made or effected except pursuant to an authorization or license." 31 C.F.R. 550.316. The term "interest," when used with respect to property, means "an interest of any nature whatsoever,

direct or indirect." 31 C.F.R. 550.315. Liens are expressly included within the scope of the restrictions. 31 C.F.R. 550.314. The term "transfer" is defined broadly, to include "the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order. 31 C.F.R. 550.313. Unless licensed by the Department of the Treasury, Office of Foreign Assets Control, "no property or interests in property of the Government of Libya that are in the United States...may be transferred...or otherwise dealt in." 31 C.F.R. 550.209(A). Finally, again unless licensed or otherwise authorized, "any attachment, judgment, decree, lien, execution, garnishment or other judicial process is null and void with respect to any property in which [after January 8, 1986] there existed an interest of the Government of Libya." 31 C.F.R. 550.210(E). Under the sanctions regulations, property in which the Government of Libya has an interest, including its UN mission property, is blocked, and is not subject to attachment or lien, unless licensed by the Office of Foreign Assets Control. Moreover, any unlicensed transaction, such as the tax lien sale contemplated in the tax notice to the Libyan Mission, may be deemed "null and void" pursuant to the sanctions regulations. Because the purported "tax lien sale" is prohibited under federal law, the City of New York should immediately withdraw the tax notice and terminate any procedures thereunder.

Finally, the City of New York should be aware that the Foreign Sovereign Immunities Act, 28 U.S.C. 1330, 1602-11 ("FSIA"), is the "sole basis for obtaining jurisdiction over a foreign state in our courts." Argentine Republic v. Amerada Hess, 488 U.S. 428 (1989). The FSIA provides specific rules for service of process on foreign states (28 U.S.C. 1608), and provides personal jurisdiction over a foreign state only where service has been effected under that section (28 U.S.C. 1330). The FSIA contains a presumption of sovereign immunity, subject to exceptions specified in the statute. See City of Englewood v. Socialist People's Libyan Arab Jamahiriya, 773 F 2d 31 (3rd Cir. 1985) (property tax proceedings against residence of head of Libyan Mission barred by FSIA). In any proceedings against a foreign government for taxes allegedly due, the City of New York would need to proceed in accordance with the FSIA.

Please confirm that the proposed tax lien sale and tax notice against the premises of the Libyan Mission to the United Nations have been withdrawn. Thank you for your cooperation in this matter.